

N.D.A.G. Letter to Harvey (Dec. 13, 1988)

December 13, 1988

Sheriff Bob Harvey
Administrator
Burleigh County Jail
P.O. Box 1416
Bismarck, ND 58502

Dear Sheriff Harvey:

Thank you for your November 23, 1988, letter concerning N.D. Admin. Code § 10-05-06-09 and its requirement of health appraisals of inmates detained in grade one or grade two jails.

The health appraisal required by N.D. Admin. Code § 10-05-06-09 must be given by a licensed physician or registered nurse within 14 days of admission. According to the rule, the nature and extent of the appraisal shall be determined by the health care administrator. Although the rule gives some discretion to the health care administrator in determining the scope and the health appraisal, the rule does list minimum appraisal requirements, including certain laboratory tests.

In his recent inspection of the Morton County Corrections Center, Neil Fahlsing of my office determined that Morton County had given the inmates at its corrections facility the option of a health appraisal. Many inmates who were not feeling ill and desired no appraisal declined the offer. Upon learning of this procedure, Mr. Fahlsing concluded that it was not in compliance with N.D. Admin. Code § 10-05-06-09 and so informed the appropriate officials of the Morton County Corrections Center. The rule does not allow the health appraisal to be an optional appraisal at the discretion of the inmate.

I am aware, however, that the burden may impose a minimum health appraisal components, including the laboratory tests required by N.D. Admin. Code § 10-05-06-09(3), in terms of costs and time to local governmental agencies. I am told that in practice such laboratory tests do not occur in each and every health appraisal. Instead, the matter of whether such tests should be given is left to the discretion of the health care administrator pursuant to the first sentence in N.D. Admin. Code § 10-05-06-09.

Currently, this office does not require each and every health appraisal to comply with N.D. Admin. Code § 10-05-06-09(3) where the health care administrator deems specific tasks inappropriate.

Your comments concerning this rule are most appreciated. Perhaps it is time to reconsider and amend this rule to reflect the current implementation of appraisal requirement.

Sincerely,

Nicholas J. Spaeth

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